SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

11/02/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss
Deputy

LC 2001-000266

FILED: _____

STATE OF ARIZONA

ROY E HORTON

v.

BARBARA JEAN WEINDEL

MICHAEL A BURKHART

MESA CITY COURT
REMAND DESK CR-CCC

RULING
AFFIRM/REMAND

MESA CITY COURT

Cit. No. 750679

Charge: 1. DRIVING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR

2. BAC OVER A .10 WITHIN TWO HOURS

3. EXTREME DUI

DOB: 09-02-1960

DOC: 12-05-2000

11/02/2001 CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES M. Cearfoss
Deputy

LC 2001-000266

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since the time of oral argument on October 15, 2001, and this decision is made within 30 days as required by Rule 9.8 Maricopa County Superior Court Local Rules of Practice. The Court has considered and reviewed the record of the proceedings from the Mesa City Court, the arguments and memoranda of counsel.

Appellant, Barbara Jean Weindel, was accused within the City of Mesa of Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(1); Driving with a Blood Alcohol Level Greater Than .10, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(2); and Extreme Driving While Under the Influence, a class 1 misdemeanor, in violation of A.R.S. Section 28-1382(A). Appellant filed a Motion to Suppress/Dismiss based upon her claim that the Mesa police officers made an unlawful seizure by stopping her vehicle prior to her arrest for driving while under the influence of intoxicating liquor. An evidentiary hearing was held by the trial court on April 4, 2001. The trial court denied Appellant's motion in a detailed written opinion of April 6, 2001. On April 9, 2001, both parties waived their rights to a jury trial and submitted the case to the court on a stipulated record. On April 9, 2001, Appellant was found guilty of all charges. Appellant was placed on unsupervised probation for 36 months, the terms of probation included paying a fine of $478.00, payment of DUI Abatement Fund assessment of $250.00, incarceration costs of $453.00, Appellant was ordered to serve 30 days in jail and 20 days were suspended pending completion by Appellant of an alcohol/drug screening, education and treatment program. Appellant filed a timely Notice of Appeal in this case.

The only issue raised by Appellant on appeal is whether the trial judge erred in denying her Motion to Suppress/Dismiss.

This Court must review this case *de novo* since Appellant's claim involves a violation of a constitutional right.[1] However, this Court must defer to the trial court's factual findings that form the basis for its legal rulings.[2]

The trial judge specifically held:

> The Court finds that the officers(´) stop of the Defendant was investigatory and reasonable under the circumstances. The officers received reliable information from an independent source that a domestic dispute/fight was taking place between individuals. One of the individuals was contacted, confirmation was received only from one of the parties that there had been a dispute. Information was provided of a location where the other party had gone. Plus, the officers had a reasonable suspicion that the Defendant was a participant in conduct for which he (the officer) was permitted to continue investigation. The purpose of the contact with the Defendant was to complete his investigation of the circumstances that provoked suspicion. (Citation omitted.)
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> Therefore, the Defendant's Motion to Suppress evidence obtained from the contact with the Defendant and to dismiss is denied.[3]

The record supports the trial judge's ruling. The Mesa police officers responded to an address in Mesa in regard to a

[1] State v. Gonzalez-Gutierrez, 187 Ariz. 116, 927 P.2d 776 (1996); Ramirez v. Health Partners of Southern Arizona, 193 Ariz. 325, 972 P.2d 658 (App. 1998).
[2] State v. Gonzalez-Gutierrez, *supra*.
[3] Order in Mesa Municipal Court docket no. 2000-103103, p. 3.

family fight which was reported on the 9-1-1 phone lines.[4] Mesa Police Office Sean Michael Benshoof and Officer Rodriguez responded to the 9-1-1 call and spoke with Jack Harwood who stated he had had an argument with his live-in girlfriend at another location.[5] The officers could not tell at that time if a domestic violence offense had occurred because they "didn't have both sides of the story."[6] Harwood gave the officers the address of his girlfriend and upon arrival at that address, the officers observed a car backing out towards them.[7] Officer Benshoof stopped the car from backing out of the driveway by moving his flashlight. The officers told the driver of the vehicle (Appellant) not to drive the car back into the driveway. Officer Rodriguez said to Appellant, "Would you mind stepping out of the car so I could talk to you?"[8] The officers verified Appellant's identity as Barbara and that she was the person they were looking for.[9] While speaking with Appellant through the window of her car, while she was still in the car, Officer Benshoof smelled alcohol.[10]

The issue raised by Appellant is precisely that the initial stop of her vehicle was without lawful authority and, therefore, the case should be dismissed. Appellee has argued that the stop and detention of Appellant while in her vehicle was an appropriate investigatory detention. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from those facts, reasonably warrant the police officer's suspicion that the accused had committed, or was about to commit, a crime.[11] These fact and inferences when considered as a whole (the

[4] Reporter's Transcript of April 4, 2001, at p. 3-4.
[5] Id at p. 4.
[6] Id. at p. 5.
[7] Id. at p. 7.
[8] Id. at p. 17.
[9] Id. at p. 28.
[10] Id. at p. 12.
[11] Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 20 L.Ed.2d 889 (1968); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998); Pharo v. Tucson City Court, 167 Ariz. 571, 810 P.2d 569 (App 1990).

"totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."[12]

A temporary detention of an accused during a stop of an automobile by the police usually constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment to the United States Constitution, even if the detention is only for a brief period of time.[13] However, not all contacts between police officers and citizens constitute "seizures" within the meaning of the Fourth Amendment.[14] Our society demands that police officers be empowered to detain and question persons for the purposes of completing an investigation. Police officers may approach and question suspects and even ask for identification, without the suspect being "seized" for Fourth Amendment purposes.[15]

The trial judge's ruling that Appellant's stop was reasonable is supported by the record. Appellant's stop by the Mesa police officers is justified as part of their investigation of a possible domestic violence incident. This Court finds no error in the trial judge's ruling denying Appellant's Motion to Suppress/Dismiss.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Mesa City Court.

IT IS FURTHER ORDERED remanding this case back to the Mesa City Court for all future proceedings.

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[12] United States v. Cortez, 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).
[13] Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).
[14] Florida v. Bostick, 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991).
[15] Id.